

EXHIBIT 6



EARTHJUSTICE

BOZEMAN, MONTANA DENVER, COLORADO HONOLULU, HAWAII
INTERNATIONAL JUNEAU, ALASKA OAKLAND, CALIFORNIA
SEATTLE, WASHINGTON TALLAHASSEE, FLORIDA WASHINGTON, D.C.

November 9, 2007

FREEDOM OF INFORMATION ACT REQUEST

Records, FOIA, and Privacy Branch
Office of Environmental Information
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Re: Freedom of Information Act Request for Chlorpyrifos Records

Dear Sir or Madam:

This letter constitutes a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, and is submitted on behalf of United Farm Workers ("UFW"), Beyond Pesticides, Pesticide Action Network of North America ("PANNA"), Martha Rodriguez, and Silvina Canez (collectively "Farmworker Advocates"). This FOIA request sets forth specific records sought by Farmworker Advocates and establishes their entitlement to a fee waiver for production of these records.

THE RECORDS SOUGHT IN THIS REQUEST

Pursuant to section 552(3) of FOIA, 5 U.S.C. § 552(3), Farmworker Advocates request Environmental Protection Agency ("EPA") records relating to the reregistration of chlorpyrifos, an organophosphate insecticide, under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"). Farmworker Advocates specifically request all data or information submitted to EPA as a result of 2001 Chlorpyrifos Interim Reregistration Eligibility Decision ("IREL"), the 2006 chlorpyrifos reregistration decision, chlorpyrifos data call ins, and EPA's responses to those submissions. Farmworker Advocates also request all literature; field tests; staff discussions; emails; notes of meetings; evaluations; analyses; and communications between EPA and USDA, AG Extensions, University staff, growers, registrants, and other experts concerning the following topics:

1. **Potential chlorpyrifos exposures**, including child and bystander exposure to chlorpyrifos and its metabolites or degradates from pesticide drift, volatilization, or contact with residues on people, clothing, furniture, carpets, playgrounds, yards, pets, and toys; and the development of any methodologies or guidance for evaluating

Records, FOIA, and Privacy Branch
Office of Environmental Information
Environmental Protection Agency
November 8, 2007
Page 2

exposure of children, families, and bystanders to chlorpyrifos and its metabolites or degradates.

2. **The risks of chlorpyrifos exposure**, including the special susceptibilities or vulnerabilities of children and other sub-populations to chlorpyrifos and its metabolites or degradates.
3. **Potential chemical and non-chemical alternatives to chlorpyrifos**, including the efficacy, costs, yield, or quality of potential chlorpyrifos alternatives; and foreign and international maximum residue levels for potential chlorpyrifos alternatives.
4. **Potential mitigation for chlorpyrifos**, including closed cabs for application of chlorpyrifos by tractors and other ground equipment; no-application buffer zones around homes, schools, water bodies, or other sensitive areas; and any protections for mixers, handlers, applicators in open cabs, and greenhouse and nursery workers from chlorpyrifos exposure.
5. **The chlorpyrifos reregistration's compliance with environmental laws**, including the Endangered Species Act, the Clean Water Act, and state water quality standards.

To the extent EPA believes any of the requested records are exempt from FOIA's disclosure requirements, Farmworker Advocates request for all reasonably segregable portions of those records that are not themselves exempt. See 5 U.S.C. § 552(b). If EPA elects to withhold any requested record or portion thereof, Farmworker Advocates request that EPA provide an itemized index describing each withheld record or portion and a detailed justification of EPA's grounds for withholding that correlates a FOIA exemption to each withheld record or portion. See Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973). This request does not include records that are currently available in the publicly accessible chlorpyrifos registration docket or otherwise readily available to the public.

ENTITLEMENT TO A FEE WAIVER

EPA is required to waive all search, review, and copying fees associated with this FOIA request because (1) disclosure is likely to contribute significantly to public understanding of the operations and activities of the government and (2) the request is not primarily in the commercial interest of requesters. See 5 U.S.C. § 522(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1).

Disclosure is likely to contribute significantly to public understanding of the operations or activities of government

In determining whether a request is "likely to contribute significantly to public

Records, FOIA, and Privacy Branch
Office of Environmental Information
Environmental Protection Agency
November 8, 2007
Page 3

understanding of the operations or activities of government,” EPA considers whether 1) the subject of the requested records concerns the operations or activities of the government; 2) the disclosure is likely to contribute to an understanding of governmental operations or activities; 3) disclosure of the requested information will contribute to public understanding; and 4) disclosure is likely to contribute significantly to public understanding of governmental operations or activities. 40 C.F.R. § 2.107(l)(2)(i)-(iv).

The requested records concern EPA’s activities.

First, the requested documents must “concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, not remote.” 40 C.F.R. § 2.107(l)(2)(i). The requested records satisfy this factor because they concern EPA’s efforts to reregister chlorpyrifos under FIFRA, an identifiable operation and activity of EPA, and public funds and resources were used to facilitate the chlorpyrifos reregistration. See Forest Guardians v. Dept. of Interior, 416 F.3d 1173, 1187 (10th Cir. 2005).

Disclosure will contribute to the public’s understanding of EPA’s activities.

Second, EPA considers whether disclosure is “likely to contribute” to an understanding of government operations or activities. 40 C.F.R. § 2.107(l)(2)(ii). This factor is satisfied because the requested records involve EPA’s registration of chlorpyrifos under FIFRA, which permits EPA to register a pesticide use only after determining that it does not pose unreasonable risk to humans or the environment. In making this risk determination, EPA engages in a complex process of assessing and balancing of the risks and benefits associated with the pesticide. The requested records will shed light on this technical decision-making process and are likely to lead to a better understanding of EPA’s pesticide reregistration decisions. These records will also facilitate the public’s evaluation of the overall effectiveness of EPA’s reregistration process. Therefore, because this request pertains only to those records that are not already readily available to the public, the requested records are “likely to contribute” to an increased public understanding of EPA’s regulatory efforts regarding chlorpyrifos. See Carney v. Dept. of Justice, 19 F.3d 807, 815-16 (2d Cir. 1994).

Disclosure will contribute to the public’s understanding EPA’s activities.

Third, EPA considers whether the requested documents will contribute to the “public understanding” of government operations by being disseminated to a “reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester.” 40 C.F.R. § 2.107(l)(2)(iii). This factor is satisfied because the Farmworker Advocates have demonstrated their ability to disseminate pesticide information to their members and the public.

UFW is a farmworkers labor union that represents over 27,000 farmworkers in 10 states, has considerable expertise in farmworkers health and workplace safety issues. UFW

Records, FOIA, and Privacy Branch
 Office of Environmental Information
 Environmental Protection Agency
 November 8, 2007
 Page 4

disseminates pesticide safety and handling information to its members through its website, direct contact with farmworkers, and membership in Californians for Pesticide Reform, which translates pesticide reports into Spanish. E.g., Margaret Reeves, Anne Katten, and Martha Guzmán, Fields of Poison 2002, California Farmworkers and Pesticides, 2000, Executive Summary at 4-8 (Exh. 1) (English version); (Exh. 2) (Spanish version).

Beyond Pesticides, a nationwide network of more than 1,000 individual and organizational members, is a recognized expert in pesticide regulation. Beyond Pesticides regularly educates its members and the public on the risks of chlorpyrifos through its *Daily News* website service, its quarterly news magazine *Pesticides and You*, its monthly news bulletin *Technical Report*, its bi-monthly bulletin *School Pesticide Monitor*. E.g., Lawsuit Challenges EPA on Continued Use of Chlorpyrifos in Agriculture, Technical Report, Vol. 22, No. 8-9, Aug. 2007, at 4 (Exh 3); Kagan Owens, Alternatives to Using Chlorpyrifos, Pesticides and You, Vol. 20, No. 1, 2000, at 19-21 (Exh. 4).

PANNA has approximately 2,700 individual members nationwide and has expertise in the toxicology of pesticides. PANNA disseminates information to its members and the public on the safety of pesticides through its regularly maintained website, its quarterly magazine, *PAN North America*, and published factsheets on pesticide safety. E.g., Poisons on the Wind: Drift Catching in Washington, PANNorth America, Spring 2007, at 18-21 (Exh. 5); Chlorpyrifos Factsheet, PANNA, Oct. 2006 (Exh. 6).

Disclosure is likely to contribute significantly to the public's understanding of EPA's activities.

Fourth, EPA considers whether the requested documents will “significantly” contribute to the understanding of government operations or activities. 40 C.F.R. § 2.107(l)(2)(iv). This factor is satisfied because there is a significant public interest served by revealing the requested information; farmworkers and the American people must be made aware of reports, investigations, decisions, other findings regarding the health and environmental risks posed by EPA’s registration of chlorpyrifos and EPA’s justifications for allowing such risks to persist. Cf. Judicial Watch v. Rossotti, 326 F.3d 1309, 1312-13 (D.C. Cir. 2003).

EPA has estimated that up to 10 million pounds of chlorpyrifos are applied in agriculture every year. Chlorpyrifos Facts, EPA 738-F-01-006 (Feb. 2002) (Exh. 7). Farmworkers and the public can be exposed to chlorpyrifos by direct dermal contact, contact with treated surfaces, ingestion of chlorpyrifos contaminated dust, by breathing air inside or outside treated buildings or near fields where it was applied, and from eating food contaminated with chlorpyrifos residues. E.g., ToxFAQs(tm) for Chlorpyrifos, Agency for Toxic Substances and Disease Registry (Sept. 1997) (Exh. 8); Fenske, RA, L. Chensheng, D. Barr, and L. Needham, Children's exposure to Chlorpyrifos and Parathion in an agricultural community in central Washington

Records, FOIA, and Privacy Branch
Office of Environmental Information
Environmental Protection Agency
November 8, 2007
Page 5

state, Envtl. Health Perspectives 2002, 110(5):549-553 (2002) (Exh. 9). In light of the high potential for chlorpyrifos exposures, there has been considerable media attention focused on the risks and efforts to regulate chlorpyrifos. E.g., Craig Welch and Warren Cornwall, EPA Faces Suit Over Farm Use of Once-Banned Insecticide, Seattle Times, Aug. 1, 2007 (Exh. 10); Jane Kay, Pesticide Threat to Babies Linked to Enzyme Levels: Researchers Find Them Much More at Risk than Adults, S.F. Chron., Mar. 2, 2006 (Exh. 11); Suspect Pesticide Still Used on State's Fruit Trees, Seattle Times, Aug. 24, 2004 (Exh. 12); Study Finds High Pesticide Levels in Americans, USA Today, May 11, 2004 (Exh. 13); Richard Perez-Pena, Babies are Larger After Ban On 2 Pesticides, Study Finds, N.Y. Times, Mar. 22, 2004 (Exh. 14); Julie Rawe, Poisoning for Dollars, Time, Apr. 22, 2002 (Exh. 15). Considering the substantial public concern with the chlorpyrifos reregistration, and the complex nature of EPA's pesticide reregistration process, the requested records will significantly aid the public in understanding the risks of chlorpyrifos and EPA's reasons for reregistering the pesticide.

Farmworker Advocates do not have a commercial interest that would be furthered by the requested disclosure.

The second criteria for a fee waiver is that the request must not be primarily in the commercial interest of requesters. 40 C.F.R. § 2.107(l)(3). Here, Farmworker Advocates consist of two individual farmworkers, two nonprofit organizations, and a labor union; each Requester will use the requested information to protect farmworkers, the public, and the environment from risks associated with chlorpyrifos.

None of the Farmworker Advocates has a primary commercial interest in the requested information. UFW seeks information on chlorpyrifos to empower farmworkers by educating them on the risks of this pesticide and safe handling practices. Beyond Pesticides and PANNA will use the information to assist individuals and community-based organizations in discussion on the hazards of pesticides and providing information on safer alternatives to chlorpyrifos. Martha Rodriguez and Silvina Canez are both individual farmworkers who have labored in fields throughout California since 1995 and 1987 respectively, have worked in and around fields treated with chlorpyrifos, and seek information on the risks that such exposures pose to themselves, their families, and their communities. Farmworker Advocates will also use the requested information to further their public interest advocacy for reform of EPA's pesticide registration practices. E.g., UFW v. EPA, No. 5:07-CV-3950 (N.D. Cal) (challenging chlorpyrifos reregistration) (Exh. 16) (First Amended Complaint); UFW v. EPA, No. 2:04-CV-99 (W.D. Wash) (challenging azinphos-methyl and phosmet registrations) (Exh. 17) (3rd Amended Complaint); PANNA, Petition to Revoke all Tolerances and Cancel all Registrations for the Pesticide Chlorpyrifos, (Sept. 12, 2007) (Exh. 18).

Because the requested information will contribute significantly to public understanding of the chlorpyrifos reregistration decisions, Farmworker Advocates have no commercial interest in

Records, FOIA, and Privacy Branch
Office of Environmental Information
Environmental Protection Agency
November 8, 2007
Page 6

the requested information, and the FOIA fee waiver provision “is to be liberally construed in favor of waivers for noncommercial requesters,” Farmworker Advocates are entitled to the waiver of all fees associated with this request. See McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1284 (9th Cir. 1987) (citation omitted).

EPA is required to respond to this FOIA request within 20 working days after receipt. 5 U.S.C. § 552(a)(6)(A). Please do not hesitate to call us if you need clarification about whether certain records fit within the parameters of this request.

Sincerely,

/s/ Joshua Osborne-Klein

Joshua Osborne-Klein
Patti Goldman
Earthjustice
705 2nd Avenue, Suite 203
Seattle, WA 98104
(206) 343-7340

Enclosures

cc: Erik Nicholson, UFW
Jay Feldman, Beyond Pesticides
Margaret Reeves, PANNA
Norman L. Rave, Jr., Esq.
Mark Dyner, Esq.
Martha Rodriguez; and Silvina Canez